

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GILBERTO MARTINEZ-OVANDO,

Petitioner,

vs.

U.S. DEPT. OF HOMELAND
SECURITY , *et al.*,

Respondents.

Case No. 2:15-cv-00739-JAD-PAL

ORDER OF DISMISSAL

This is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Neither a filing fee nor an application to proceed *in forma pauperis* was submitted with the petition. When filing a habeas action, a petitioner must submit either the \$5.00 filing fee for habeas petitions or an application to proceed *in forma pauperis*. Due to the lack of an *in forma pauperis* application or filing fee, this action will be dismissed without prejudice to the filing of a new petition in a new action with a pauper application with all required attachments. It does not appear from the papers presented that a dismissal without prejudice would result in a promptly-filed new petition being untimely. In this regard, petitioner at all times remains responsible for calculating the running of the limitations period as applied to his case and properly commencing a timely-filed habeas corpus action.

IT THEREFORE IS ORDERED that this action is **DISMISSED** without prejudice to the filing of **a new petition in a new action**.

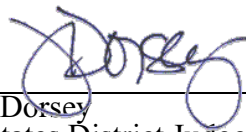
IT IS FURTHER ORDERED that the Clerk of the Court shall send petitioner two copies of an *in forma pauperis* application form for a prisoner, one copy of the instructions for the same, two copies of a blank 28 U.S.C. § 2254 habeas petition form, and one copy of instructions for the same.

IT IS FURTHER ORDERED that petitioner may file a new petition in a new action, but **he may not file further documents in this action**.

1 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED** because
2 reasonable jurists would not find the dismissal of the improperly-commenced action without
3 prejudice to be debatable or wrong.

4 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment accordingly.

5 Dated this 29th day of April, 2015.

6
7 
8 _____
Jennifer Dorsey
United States District Judge